

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 71 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

( No. 1 to 5 NO )

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PURNIMABEN RAMDAS SANGHAVI

Versus

STATE OF GUJARAT

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Appearance:

MR AJ PATEL for Petitioners

MR. TH SOMPURA, LD.GOV'T.COUNSEL FOR Respondent No. 1, 2

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 05/02/97

ORAL JUDGEMENT

The dispute in the present petition centers round the mutation entry No. 2222 posted in the Revenue Record on November 02, 1981, which came to be certified later on by the Mamlatdar on December 08, 1981. The question which falls for determination nonetheless is as to whether the said entry posted and certified in year 1981 could have

been revised by the Collector in the RTS Revisional proceedings after a period of fifteen years.

One Kasturben Sanghavi happen to be the occupant of five pieces of land situated at village Nana Vaghachhiya under the Pardi taluka of the Bulsar district. The mutation entry No. 2222 came to be posted on November 02, 1981, showing that the son of the occupant Smt. Kasturben Sanghavi namely Ramdas Sanghavi stays at Bombay but his two daughters, namely Purnimaben and Binduben, the present petitioners stay in the very same village and that, as they assist the occupant Kasturben in the agricultural operations their name should be entered in the Revenue Record in respect of the four pieces of land. This entry which was posted in the Revenue Record on November 02, 1981 ultimately came to be certified by the Mamlatdar on December 08, 1981. Later on Collector, Bulsar had initiated suo motu review/revision proceedings in year 1995 and a conclusion has been arrived at, saying that the above said entry does not appear to be in consonance with law, and possibly has been got posted in the Revenue Record with other collateral purposes. Therefore under the orders dated September 23, 1996, the above said entry was ordered to be deleted from the Revenue Record. The matter was carried before the Special Secretary to the Government, who was pleased to dismiss the revision under the orders dated November 22, 1996 and to confirm the orders of Collector, Bulsar. These are the orders in challenge before me.

Learned counsel Mr. A.J. Patel who appears on behalf of the petitioners, placing reliance upon the Supreme Court decision in case of State of Gujarat v. Patel Raghav Natha and others, 10 GLR pg. 992, urges that the revisional powers which are also said to be review powers simultaneously in the orders could not have been exercised suo motu after such an unreasonable period. It is not in dispute that something was sought to be done under the guise of either a review or a revision after a period of fifteen years. The principle laid down by the Supreme Court in case of State of Gujarat Vs. Patel Raghav Natha (supra) in my view is attracted which would oblige me to come to the conclusion that, such an exercise could not have been done after such a long lapse of time. The Supreme Court pronouncement makes it clear while considering provisions contained under Section 65 and 211 of the Bombay Land Revenue Code 1879 that, though no period of limitation has been prescribed under Section 211 of the Code, the discretion under this section must be exercised in reasonable time

in view of Section 65. The decision is clearly based upon the provisions contained under Section 65 and 211 of Bombay Land Revenue Code 1879. Any how, the view has been taken that such powers should be exercised within a period of reasonable time frame. Ordinarily such time frame so far as the question of the reasonableness is concerned would depend upon the fact & circumstances of a given case. Here, as pointed out by me earlier, the powers are sought to be exercised after a lapse of about fifteen years.

Ld. Govt. Counsel Mr. Sompura wanted to come out of the rigors of the principle laid down by Supreme Court in case of State of Gujarat Vs. Patel Raghav Natha, by urging that, there has been no change in the use and occupation of the land in question and that, because of absence of any other or further development there has been no creation of equities in favour of anybody. Ld. Govt. Counsel proceeds to urge that, in absence of creation of equities in favour of anybody the time lag of fifteen years could be said to be a reasonable time gap which would fall within the purview of what has been said by the Supreme Court in case of State of Gujarat Vs. Patel Raghav Natha (supra). This is not the spirit of the decision rendered by the Supreme Court. Merely because the lands continue to remain in same position and merely because equities are not created, it cannot be urged that the time frame as explained by Supreme Court would stand extended up to an enormously large period of fifteen years. More over, according to me there is basic fallacy in the contention coming from the learned Govt. Counsel when he urges that, no equities have been created. It is clear that the lands were in the name of Smt. Kasturben Sanghavi and because of the posting of the entries, the names of two daughters and their father Ramdas Sanghavi have been entered in the Revenue Record. The question is as to whether this cannot be said to be the creation of equities in favour of the son of the holder and two grand daughters. The answer to this question must be in affirmative. Therefore also the contention coming from learned Govt. Counsel in this respect cannot be accepted.

The conclusion therefore would be that, the review authorities were at an error in the reopening of the entire chapter under the guise of revision and/or review after a lapse of fifteen years. The petition therefore requires a complete recognition and the said orders which are in challenge require to be quashed and set aside. I order accordingly. Rule is made absolute to

the above said extent with no order as to cost.

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